

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2624**

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**Introduced by Assembly Member Medina**

February 21, 2014

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An act to *add Section 17533.75 to the Business and Professions Code, and to amend Section 1770 of the Civil Code, and to add Section 17533.75 to the Business and Professions Code*, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2624, as amended, Medina. False advertising: Made in North America.

Existing law makes unlawful certain acts identified as unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result, or that results, in the sale or lease of goods to any consumer. Existing law makes it unlawful for any person, firm, corporation, or association to sell, or offer for sale, merchandise that advertises itself as being made or manufactured in the United States when any article, unit, or part of the merchandise has been entirely or substantially made, manufactured, or produced outside of the United States. Existing law makes a violation of the latter provision a misdemeanor.

This bill would make it unlawful for any person, firm, corporation, or association to sell, or offer for sale, ~~merchandise~~ *a product* that advertises itself as being made ~~or manufactured~~ in North America unless ~~the merchandise, or any article, unit, or part of the merchandise has been entirely or substantially made, manufactured, assembled, processed, or produced~~ *all or virtually all of the product was made* in the United States, Canada, or Mexico. Because a violation of these provisions

would be a misdemeanor, the bill would create a new crime, thus, the bill would impose a state-mandated local program.

The bill would additionally include a representation in violation of these provisions among those acts identified as unfair methods of competition and unfair or deceptive acts or practices.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17533.75 is added to the Business and  
2 Professions Code, to read:

3 17533.75. ~~(a)–It is unlawful for any person, firm, corporation,~~  
4 ~~or association to sell or offer for sale in this state any merchandise~~  
5 ~~on which merchandise or on its container there appears product~~  
6 ~~that contains the words “Made in North America,” “North~~  
7 ~~American Made,” or similar words on the product or its container~~  
8 ~~unless the merchandise or any article, unit, or part thereof has been~~  
9 ~~entirely or substantially made, manufactured, assembled, processed,~~  
10 ~~or produced in the United States, Canada, or Mexico: all or~~  
11 ~~virtually all of the product was made in the United States, Canada,~~  
12 ~~or Mexico.~~

13 ~~(b) For the purposes of this section, “substantially made” means~~  
14 ~~completed an act that added at least 70 percent of the merchandise’s~~  
15 ~~wholesale value by manufacture, assembly, fabrication, or~~  
16 ~~production to create the final, recognizable product. “Substantially~~  
17 ~~made” does not include the act of packaging the product.~~

18 SEC. 2. Section 1770 of the Civil Code is amended to read:

19 1770. (a) The following unfair methods of competition and  
20 unfair or deceptive acts or practices undertaken by any person in  
21 a transaction intended to result or which results in the sale or lease  
22 of goods or services to any consumer are unlawful:

23 (1) Passing off goods or services as those of another.

24 (2) Misrepresenting the source, sponsorship, approval, or  
25 certification of goods or services.

1 (3) Misrepresenting the affiliation, connection, or association  
2 with, or certification by, another.

3 (4) Using deceptive representations or designations of  
4 geographic origin in connection with goods or services.

5 (5) Representing that goods or services have sponsorship,  
6 approval, characteristics, ingredients, uses, benefits, or quantities  
7 which they do not have or that a person has a sponsorship,  
8 approval, status, affiliation, or connection which he or she does  
9 not have.

10 (6) Representing that goods are original or new if they have  
11 deteriorated unreasonably or are altered, reconditioned, reclaimed,  
12 used, or secondhand.

13 (7) Representing that goods or services are of a particular  
14 standard, quality, or grade, or that goods are of a particular style  
15 or model, if they are of another.

16 (8) Disparaging the goods, services, or business of another by  
17 false or misleading representation of fact.

18 (9) Advertising goods or services with intent not to sell them  
19 as advertised.

20 (10) Advertising goods or services with intent not to supply  
21 reasonably expectable demand, unless the advertisement discloses  
22 a limitation of quantity.

23 (11) Advertising furniture without clearly indicating that it is  
24 unassembled if that is the case.

25 (12) Advertising the price of unassembled furniture without  
26 clearly indicating the assembled price of that furniture if the same  
27 furniture is available assembled from the seller.

28 (13) Making false or misleading statements of fact concerning  
29 reasons for, existence of, or amounts of price reductions.

30 (14) Representing that a transaction confers or involves rights,  
31 remedies, or obligations which it does not have or involve, or  
32 which are prohibited by law.

33 (15) Representing that a part, replacement, or repair service is  
34 needed when it is not.

35 (16) Representing that the subject of a transaction has been  
36 supplied in accordance with a previous representation when it has  
37 not.

38 (17) Representing that the consumer will receive a rebate,  
39 discount, or other economic benefit, if the earning of the benefit

1 is contingent on an event to occur subsequent to the consummation  
2 of the transaction.

3 (18) Misrepresenting the authority of a salesperson,  
4 representative, or agent to negotiate the final terms of a transaction  
5 with a consumer.

6 (19) Inserting an unconscionable provision in the contract.

7 (20) Advertising that a product is being offered at a specific  
8 price plus a specific percentage of that price unless (A) the total  
9 price is set forth in the advertisement, which may include, but is  
10 not limited to, shelf tags, displays, and media advertising, in a size  
11 larger than any other price in that advertisement, and (B) the  
12 specific price plus a specific percentage of that price represents a  
13 markup from the seller's costs or from the wholesale price of the  
14 product. This subdivision shall not apply to in-store advertising  
15 by businesses which are open only to members or cooperative  
16 organizations organized pursuant to Division 3 (commencing with  
17 Section 12000) of Title 1 of the Corporations Code where more  
18 than 50 percent of purchases are made at the specific price set forth  
19 in the advertisement.

20 (21) Selling or leasing goods in violation of Chapter 4  
21 (commencing with Section 1797.8) of Title 1.7.

22 (22) (A) Disseminating an unsolicited prerecorded message by  
23 telephone without an unrecorded, natural voice first informing the  
24 person answering the telephone of the name of the caller or the  
25 organization being represented, and either the address or the  
26 telephone number of the caller, and without obtaining the consent  
27 of that person to listen to the prerecorded message.

28 (B) This subdivision does not apply to a message disseminated  
29 to a business associate, customer, or other person having an  
30 established relationship with the person or organization making  
31 the call, to a call for the purpose of collecting an existing  
32 obligation, or to any call generated at the request of the recipient.

33 (23) The home solicitation, as defined in subdivision (h) of  
34 Section 1761, of a consumer who is a senior citizen where a loan  
35 is made encumbering the primary residence of that consumer for  
36 the purposes of paying for home improvements and where the  
37 transaction is part of a pattern or practice in violation of either  
38 subsection (h) or (i) of Section 1639 of Title 15 of the United States  
39 Code or paragraph (e) of Section 226.32 of Title 12 of the Code  
40 of Federal Regulations.

1 A third party shall not be liable under this subdivision unless  
2 (A) there was an agency relationship between the party who  
3 engaged in home solicitation and the third party or (B) the third  
4 party had actual knowledge of, or participated in, the unfair or  
5 deceptive transaction. A third party who is a holder in due course  
6 under a home solicitation transaction shall not be liable under this  
7 subdivision.

8 (24) (A) Charging or receiving an unreasonable fee to prepare,  
9 aid, or advise any prospective applicant, applicant, or recipient in  
10 the procurement, maintenance, or securing of public social services.

11 (B) For purposes of this paragraph, the following definitions  
12 shall apply:

13 (i) "Public social services" means those activities and functions  
14 of state and local government administered or supervised by the  
15 State Department of Health Care Services, the State Department  
16 of Public Health, or the State Department of Social Services, and  
17 involved in providing aid or services, or both, including health  
18 care services, and medical assistance, to those persons who,  
19 because of their economic circumstances or social condition, are  
20 in need of that aid or those services and may benefit from them.

21 (ii) "Public social services" also includes activities and functions  
22 administered or supervised by the United States Department of  
23 Veterans Affairs or the California Department of Veterans Affairs  
24 involved in providing aid or services, or both, to veterans, including  
25 pension benefits.

26 (iii) "Unreasonable fee" means a fee that is exorbitant and  
27 disproportionate to the services performed. Factors to be  
28 considered, when appropriate, in determining the reasonableness  
29 of a fee, are based on the circumstances existing at the time of the  
30 service and shall include, but not be limited to, all of the following:

- 31 (I) The time and effort required.  
32 (II) The novelty and difficulty of the services.  
33 (III) The skill required to perform the services.  
34 (IV) The nature and length of the professional relationship.  
35 (V) The experience, reputation, and ability of the person  
36 providing the services.

37 (C) This paragraph shall not apply to attorneys licensed to  
38 practice law in California, who are subject to the California Rules  
39 of Professional Conduct and to the mandatory fee arbitration  
40 provisions of Article 13 (commencing with Section 6200) of

Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(25) (A) Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements that does not include the following statement in the same type size and font as the term "veteran" or any variation of that term:

(i) "I am not authorized to file an initial application for Veterans' Aid and Attendance benefits on your behalf, or to represent you before the Board of Veterans' Appeals within the United States Department of Veterans Affairs in any proceeding on any matter, including an application for such benefits. It would be illegal for me to accept a fee for preparing that application on your behalf." The requirements of this clause do not apply to a person licensed to act as an agent or attorney in proceedings before the Agency of Original Jurisdiction and the Board of Veterans' Appeals within the United States Department of Veterans Affairs when that person is offering those services at the advertised event.

(ii) The statement in clause (i) shall also be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or public gathering regarding veterans' benefits or entitlements.

(B) Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements which is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries that does not include the following statement, in the same type size and font as the term "veteran" or the variation of that term:

"This event is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the

1 Armed Forces of the United States, or any of their auxiliaries.  
2 None of the insurance products promoted at this sales event are  
3 endorsed by those organizations, all of which offer free advice to  
4 veterans about how to qualify and apply for benefits.”  
5

6 (i) The statement in this subparagraph shall be disseminated,  
7 both orally and in writing, at the beginning of any event,  
8 presentation, seminar, workshop, or public gathering regarding  
9 veterans’ benefits or entitlements.

10 (ii) The requirements of this subparagraph shall not apply in a  
11 case where the United States Department of Veterans Affairs, the  
12 California Department of Veterans Affairs, or other congressionally  
13 chartered or recognized organization of honorably discharged  
14 members of the Armed Forces of the United States, or any of their  
15 auxiliaries have granted written permission to the advertiser or  
16 promoter for the use of its name, symbol, or insignia to advertise  
17 or promote the event, presentation, seminar, workshop, or other  
18 public gathering.

19 (26) Representing that a product is made in California by using  
20 a Made in California label created pursuant to Section 12098.10  
21 of the Government Code, unless the product complies with Section  
22 12098.10 of the Government Code.

23 (27) Representing that a product is made in North America in  
24 violation of Section 17533.75 of the Business and Professions  
25 Code.

26 (b) (1) It is an unfair or deceptive act or practice for a mortgage  
27 broker or lender, directly or indirectly, to use a home improvement  
28 contractor to negotiate the terms of any loan that is secured,  
29 whether in whole or in part, by the residence of the borrower and  
30 which is used to finance a home improvement contract or any  
31 portion thereof. For purposes of this subdivision, “mortgage broker  
32 or lender” includes a finance lender licensed pursuant to the  
33 California Finance Lenders Law (Division 9 (commencing with  
34 Section 22000) of the Financial Code), a residential mortgage  
35 lender licensed pursuant to the California Residential Mortgage  
36 Lending Act (Division 20 (commencing with Section 50000) of  
37 the Financial Code), or a real estate broker licensed under the Real  
38 Estate Law (Division 4 (commencing with Section 10000) of the  
39 Business and Professions Code).

1 (2) This section shall not be construed to either authorize or  
2 prohibit a home improvement contractor from referring a consumer  
3 to a mortgage broker or lender by this subdivision. However, a  
4 home improvement contractor may refer a consumer to a mortgage  
5 lender or broker if that referral does not violate Section 7157 of  
6 the Business and Professions Code or any other provision of law.  
7 A mortgage lender or broker may purchase an executed home  
8 improvement contract if that purchase does not violate Section  
9 7157 of the Business and Professions Code or any other provision  
10 of law. Nothing in this paragraph shall have any effect on the  
11 application of Chapter 1 (commencing with Section 1801) of Title  
12 2 to a home improvement transaction or the financing thereof.

13 SEC. 3. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.